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CHARLES ELMORE BROPLEY
CLARK

IN THE
Supreme Court of the United States

No. **509**

Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,
RICHARD J. BEAMISH, and DONALD LIVINGSTON,
individually, and as the persons constituting the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

and

UTILITY CONSUMERS LEAGUE OF THE CITY
AND COUNTY OF YORK,

Appellants

v.

EDISON LIGHT & POWER COMPANY, a corporation
Appellee

OPPOSITION OF EDISON LIGHT & POWER COMPANY TO MOTION OF PENNSYLVANIA PUBLIC UTILITY COMMISSION TO ADVANCE ARGUMENT.

WALTER BIDDLE SAUL,
Counsel for Appellee.

CLARENCE W. MILES,
EDWARD F. HUBER,
J. HARRY LABRUM,
Of Counsel.

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OPPOSITION OF EDISON LIGHT & POWER COM- PANY TO MOTION OF PENNSYLVANIA PUB- LIC UTILITY COMMISSION TO ADVANCE ARGUMENT.

Edison Light & Power Company, appellee in the above-entitled cause, opposes the motion to advance heretofore filed herein by the appellants on the grounds that (1) the granting of the motion would seriously prejudice the appellee and (2) the reasons advanced by the appellants are insufficient to justify the granting the motion.

1. The granting of the motion would seriously prejudice the appellee.

Counsel for the appellee have pending professional commitments which prevent their entering upon the preparation of briefs and argument without serious interference and prejudice to the rights of other clients, in whose behalf they are now acting. Walter Biddle Saul, Esquire, and Edward F. Huber, Esquire, of appellee's counsel, are now engaged in the conduct of an investigatory proceeding before the Federal Power Commission, hearings in which, they are advised, may continue for several weeks. Clarence W. Miles, Esquire, of appellee's counsel, has been and is now engaged in a proceeding under Section 21-a. of the Bankruptcy Act, instituted by the Treasury Department of the United States, and being carried on in Wilmington, Delaware, before a Special Master appointed by the United States Court for the District of Delaware. Hearings in this matter are expected to continue several days during each week of the next three weeks.

Under such circumstances, it will be impossible for said counsel adequately to review a record of over nine hundred printed pages of testimony and numerous statistical exhibits, as well as to prepare written and oral argument, if argument in this case is advanced prior to January 17, 1939, or before the date on which it would normally be reached.

2. The reasons advanced by the appellants are insufficient to justify the granting of the motion.

(a) The speedy conclusion of the rate litigation in which the appellee is involved does not, as urged by appellants, require the advancement of the argument.

The rate proceedings were instituted in 1936, on its own motion, by the Pennsylvania Public Service Commission, the predecessor regulatory body to the Pennsylvania Public Utility Commission, the appellants herein. Hearings before the Public Service and Public Utility Commissions proceeded until June 23, 1937 when the taking of testimony concluded. There is no contention that the proceedings were not carried on with all due diligence and dispatch until concluded on said date. The record was then in such condition that a *final* rate order could have been made by the Commission and the appellee has, since sought, without success, to obtain such a final order.

The Commission did not then make, and has not since made, in the intervening period of a year and a half, a final rate order. Instead, so-called "temporary" rate orders were entered, one of which was voluntarily withdrawn by the Commission, the second of which was permanently enjoined by a federal statutory court and the third of which, *entered over a year ago*, was likewise enjoined, and is the subject of this appeal.

A speedy conclusion in the public interest of the rate litigation herein involved can be promptly effected by the Commission entering its order prescribing *final* rather than temporary rates. The Commission possesses not only the power but is charged with the duty of fixing *final* rates in proceedings where, as in the instant case, all hearings in connection therewith have been completed and no party in interest is desirous of presenting further testimony or evidence.

Furthermore, the Commission waited thirty-five days after the entry of a final decree in this cause before filing their appeal, the argument of which they now seek to advance.

(b) The general public interest does not require the advancement of the argument.

The fact that, as alleged by appellants in their motion to advance, there are one hundred and ninety-three rate cases pending before the Commission does not indicate that temporary rates would be warranted in any of such cases. There is no suggestion in the Commission's motion that either the state of the record in those cases or the facts developed therein, justify the application of Section 310 of the Pennsylvania Public Utility Law, the section providing for temporary rates and the validity of a portion of which is in issue in this appeal. Nor is there a suggestion that in any one of those cases the Commission would have made a temporary rate order but for the pendency of this appeal. Indeed, no such statement could properly be made for, since the decision appealed from, the Commission has manifested that it did not feel circumscribed by such decision by imposing temporary rates in several cases among those listed in Exhibit A of the appellants' motion.

These facts show, in addition, that neither the decision appealed from nor its alleged conflict with any other decision, has rendered it impossible for the Commission to administer the Pennsylvania Public Utility Law or Section 310 thereof, as alleged in its motion to advance.

(c) The retirement from office of the Attorney General and the counsel for the Commission on January 17, 1939 will neither prejudice nor delay appellants, nor adversely affect the public interest.

In the proceedings before the Commission, Samuel Graff Miller, Esquire, its assistant counsel, has conducted all hearings, examined all the witnesses and presented all of the Commission's evidence. Edward Knuff, Esquire, the Commission's counsel, did not participate. In the suit now on appeal, as well as in a previous suit in the United States Court for the Middle District of Pennsylvania, Mr. Miller again examined all witnesses, presented all the Commission's evidence and made all arguments in its behalf. Mr. Knuff presented no evidence, examined no witnesses and made no arguments. Mr. Miller does *not* retire from office on January 17th and the fact that Mr. Knuff does retire on that date need not prejudice the appellants or the public interest.

The Attorney General has at no time had any active participation in the case. When the suit was instituted he was a public utility commissioner and a defendant in the action. It is impossible to see how his retirement on January 17, 1939 can prejudice the Commission or the public interest in any manner.

WALTER BIDDLE SAUL,

Counsel for Appellee.

CLARENCE W. MILES,

EDWARD F. HUBER,

J. HARRY LABRUM,

Of Counsel.